

IN HONOR OF THE BISHOP HARTLEY HIGH SCHOOL FOOTBALL TEAM

HON. PATRICK J. TIBERI

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 3, 2017

Mr. TIBERI. Mr. Speaker, I rise today to recognize the Bishop Hartley High School Football Team for winning the Ohio Division IV State Football Tournament.

An achievement such as this certainly deserves recognition. The Ohio High School Athletic Association has enabled talented teams and individuals to earn state titles since its founding in 1907. Throughout this time, the champions of OHSAA state level competitions have represented the highest achieving and most talented athletes in Ohio. Each year these elite competitors join the long ranks of those who embody Ohio's proud history of athletic success.

The Bishop Hartley Football Team's victory caps a tremendous season. This sort of achievement is earned only through many hours of practice, perspiration and hard work. They have set a new standard for future athletes to reach. Everyone at Bishop Hartley High School can be extremely proud of their performance.

On behalf of the citizens of Ohio's 12th Congressional District, I congratulate the Bishop Hartley Football Team on their state championship. I wish them continued success in both athletic and academic endeavors.

CELEBRATING THE 150TH ANNIVERSARY OF THE TOWNSHIP OF MONTVILLE, NEW JERSEY

HON. RODNEY P. FRELINGHUYSEN

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 3, 2017

Mr. FRELINGHUYSEN. Mr. Speaker, I rise today to honor the Township of Montville, New Jersey on its 150th Anniversary.

Montville Township is a beautiful, suburban community located in Morris County in northwestern New Jersey bordered by the Passaic River. The Township's nineteen square miles are comprised of three towns: Montville, Pine Brook, and Towaco. As of 2013 U.S. Census estimates, there are approximately 21,663 people living within the Township. These residents enjoy an active, vibrant community with a full range of municipal services, an excellent public school system, and a first-rate public library that provides services, activities, and volunteer opportunities for people of all ages.

Originally known as "Owl-Kill" (the Dutch spelling of "Owl-Kill"), the region now known as Montville Township was first settled by Dutch farmers in the early 18th Century. The settlement grew in size, and by the 1740's, construction of the first major road in the area had begun.

This road was to come of use in the Revolutionary War, during which Montville served as a major military route from Morristown to the Hudson River. General Washington's troops often took this route, and Washington himself stayed in Montville in June of 1780. French reinforcement troops led by General Rocham-

beau also passed through Montville on their way to the Revolutionary War's final victory at Jamestown, Virginia.

The mid-19th Century saw the development of two smaller village centers set apart from Montville—Pine Brook, a fertile agricultural area in the Township's southern end, and Whitehall (later called Towaco), situated on the Morris Canal. Construction of the Morris Canal was completed in this area in 1828, bringing commercial navigation to the Montville and Towaco areas. On April 11, 1867, the Township of Montville was formally chartered from nineteen square miles of territory formerly belonging to Pequannock Township.

Montville Township has consistently ranked among the best places to live both in New Jersey and across the country.

Montville Township has also been recognized for its commitment to public safety, which directly impacts the quality of living in the community. The Township has also implemented a Community Dispute Resolution Committee to aid law enforcement by independently mediating citizen disputes.

Finally, Montville has taken a proactive approach to streamlining its business development approval process, making the Township a great place to start or relocate a business.

Mr. Speaker, I ask that you and our colleagues join me in congratulating Montville on its Sesquicentennial Anniversary.

INTRODUCTION OF THE PROTECTING EMPLOYEES AND RETIREES IN BUSINESS BANKRUPTCIES ACT OF 2017

HON. JOHN CONYERS, JR.

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 3, 2017

Mr. CONYERS. Mr. Speaker, throughout our Nation's history, hardworking American men and women have labored to make our businesses become the most productive and dynamic in the world. Unfortunately, when some of these businesses encounter financial difficulties and seek to reorganize their debts under Chapter 11 of the Bankruptcy Code, these very same workers and retirees are often asked to make major sacrifices through lost job protections, lower wages, and the elimination of hard-won pension and health benefits, while the executives and managers of these businesses are not required to make comparable sacrifices.

We must do more to ensure that America's most important resource—workers and retirees—are treated more fairly when these businesses seek to reorganize their financial affairs under the protection of our bankruptcy laws. The Protecting Employees and Retirees in Business Bankruptcies Act of 2017 accomplishes this goal by amending the Bankruptcy Code in several respects. First, it improves recoveries for employees and retirees by: (1) increasing the amount of worker claims entitled to priority payment for unpaid wages and contributions to employee benefit plans up to \$20,000; (2) eliminating the difficult to prove restriction in current law that wage and benefit claims must be earned within 180 days of the bankruptcy filing in order to be entitled to priority payment; (3) allowing employees to as-

sert claims for losses in certain defined contribution plans when such losses result from employer fraud or breach of fiduciary duty; (4) establishing a new priority administrative expense for workers' severance pay; and (5) clarifying that back pay awards for WARN Act damages are entitled to the same priority as back pay for other legal violations.

Second, the legislation reduces employees' and retirees' losses by: (1) restricting the conditions under which collective bargaining agreements and commitments to fund retiree pensions and health benefits may be eliminated or adversely affected; (2) preventing companies from singling out non-management retirees for concessions; (3) requiring a court to consider the impact a bidder's offer to purchase a company's assets would have on maintaining existing jobs and preserving retiree pension and health benefits; and (4) clarifying that the principal purpose of Chapter 11 bankruptcy is the preservation of jobs to the maximum extent possible.

Third, the bill restricts excessive executive compensation programs by: (1) requiring full disclosure and court approval of executive compensation packages; (2) restricting the payment of bonuses and other forms of incentive compensation to senior officers and others; and (3) ensuring that insiders cannot receive retiree benefits if workers have lost their retirement or health benefits.

This legislation is identical to H.R. 97, introduced in the 114th Congress, H.R. 100, introduced in the 113th Congress, and H.R. 6117, introduced in the 112th Congress. It is supported by the AFL-CIO and many of its largest affiliates. A section-by-section explanation of the bill follows:

Sec. 1. Short Title. Section 1 sets forth the short title of the bill as the "Protecting Employees and Retirees in Business Bankruptcies Act of 2017." It also includes a table of contents for the bill.

Sec. 2. Findings. Section 2 sets forth various findings in support of this bill. Title I—Improving Recoveries for Employees and Retirees.

Sec. 101. Increased Wage Priority. Bankruptcy Code section 507 accords priority in payment status for certain types of claims, i.e., these priority claims must be paid in full in the order of priority before general unsecured claims may be paid. Section 507(a)(4) accords a fourth level priority to an unsecured claim up to \$10,000 owed to an individual for wages, salaries, or commissions (including vacation, severance, and sick leave pay) earned within the 180-day period preceding the filing of the bankruptcy case or the date on which the debtor's business ceased, whichever occurs first. Section 101 amends section 507(a)(4) to increase the amount of the priority to \$20,000 and eliminate the 180-day reachback limitation.

Bankruptcy Code section 507(a)(5) accords a fifth level priority for unsecured claims for contributions to an employee benefit plan arising from services rendered within the 180-day period preceding the filing of the bankruptcy case or the date on which the debtor's business ceased (whichever occurs first). The amount of the claim is based on the number of employees covered by the plan multiplied by \$10,000, less the aggregate amount paid to such employees pursuant to section 507(a)(4) and the aggregate amount paid by the estate on behalf of such employees to any other employee benefit plan. Section 101 amends

Bankruptcy Code section 507(a)(5) to: (1) increase the priority amount to \$20,000; (2) eliminate the offset requirements; and (3) eliminate the 180-day limitation.

Sec. 102. Claim for Stock Value Losses in Defined Contribution Plans. Section 102 amends the Bankruptcy Code's definition of a claim to include a right or interest in equity securities of the debtor (or an affiliate of the debtor) held in a defined contribution plan for the benefit of an individual who is not an insider, senior executive officer or one of the 20 next most highly compensated employees of the debtor (if one or more are not insiders), providing: (1) such securities were attributable to employer contributions by the debtor (or an affiliate of the debtor), or by elective deferrals, together with any earnings thereon; and (2) the employer or plan sponsor who commenced the bankruptcy case either committed fraud with respect to such plan or otherwise breached a duty to the participant that proximately caused the loss of value.

Sec. 103. Priority for Severance Pay. Bankruptcy Code section 503(b) establishes an administrative expense payment priority for certain types of unsecured claims. Among all types of unsecured claims, administrative expenses are accorded the highest payment priority, i.e., they must be paid in full before priority and general unsecured claims may be paid. Section 103 amends section 503(b) to accord administrative expense priority for severance pay owed to the debtor's employees (other than an insider, other senior management, or a consultant retained to provide services to the debtor) under a plan, program or policy generally applicable to the debtor's employees (but not under an individual contract of employment) or owed pursuant to a collective bargaining agreement for termination or layoff on or after the date the bankruptcy case was filed. Such pay is deemed earned in full upon such termination or layoff.

Sec. 104. Financial Returns for Employees and Retirees. Bankruptcy Code section 1129(a) specifies various criteria that must be satisfied before a chapter 11 plan of reorganization may be confirmed. Section 104 amends section 1129(a) to add a further requirement. The plan must provide for the recovery of damages for the rejection of a collective bargaining agreement or for other financial returns as negotiated by the debtor and the authorized representative under section 1113 to the extent such returns are paid under, rather than outside of a plan.

Section 104 also replaces Bankruptcy Code section 1129(a)(13), which pertains to the payment of retiree benefits under section 1114. As revised, section 1129(a)(13) requires a plan to provide for the continuation after the plan's effective date of the payment of all retiree benefits at the level established under either section 1114(e)(1)(B) or (g) at any time prior to confirmation of the plan, for the duration of the period for which the debtor has obligated itself to provide such benefits. If any modifications are made prior to confirmation of the plan, the plan must provide for the continuation of all retiree benefits maintained or established in whole or in part by the debtor prior to the petition filing date. In addition, the plan must provide for recovery of claims arising from the modification of retiree benefits and other financial returns as negotiated by the debtor and the authorized representative to the extent such returns are paid under, rather than outside of, a plan.

Sec. 105. Priority for WARN Act Damages. Section 105 amends Bankruptcy Code section 503(b)(1)(A)(ii) to provide administrative expense status to wages and benefits awarded pursuant to a judicial or National Labor Relations Board proceeding as back pay or damages attributable to any period of time occurring after the commencement of the bankruptcy case. This provision applies where the award was made as a result of the debtor's violation of federal or state law, without regard to the time of the occurrence of unlawful conduct on which the award is based or to whether any services were rendered on or after the commencement of the bankruptcy case. It includes an award by a court under section 2901 of title 29 of the United States Code of up to 60 days' pay and benefits following a layoff that occurred or commenced at a time when such award period includes a period on or after the commencement of the case, if the court determines that payment of wages and benefits by reason of the operation of this clause will not substantially increase the probability of layoff or termination of current employees or of nonpayment of domestic support obligations during the case under this title. Title II—Reducing Employees' and Retirees' Losses.

Sec. 201. Rejection of Collective Bargaining Agreements. Bankruptcy Code section 1113 sets forth the requirements by which a collective bargaining agreement may be assumed or rejected. Section 201 amends section 1113 in several respects. First, it amends section 1113(a) to clarify that a chapter 11 debtor may reject a collective bargaining agreement only in accordance with section 1113.

Second, it amends Bankruptcy Code section 1113(b) to clarify that no provision in title II of the United States Code may be construed to permit a trustee to unilaterally terminate or alter the terms of a collective bargaining agreement absent compliance with section 1113. The provision further specifies that the trustee must timely pay all monetary obligations arising under such agreement and that any payment required to be made pre-confirmation has the status of an allowed administrative expense under Code section 503.

Third, it amends Bankruptcy Code section 1113(c) to require a trustee, when seeking to modify a collective bargaining agreement, to provide notice of such proposed modification to the labor organization representing the employees covered by the agreement. The trustee must also promptly provide an initial proposal for modification. In addition, the trustee must confer in good faith with the labor organization, at reasonable times and for a reasonable period, given the complexity of the case, in an effort to reach a mutually acceptable modification of the agreement. Each modification proposal must be based on a business plan for the reorganization of the debtor and reflect the most complete and reliable information. As amended, section 1113(c) requires the trustee to provide to the labor organization all information relevant for negotiations. If such disclosure could compromise the debtor's position with respect to its competitors in the industry, the provision authorizes the court to issue a protective order, subject to the needs of the labor organization to evaluate the trustee's proposal and any application to reject the collective bargaining agreement or for interim relief under section 1113.

In consideration of federal policy encouraging the practice and process of collective

bargaining and in recognition of the bargained-for expectations of the employees covered by the agreement, any modification proposed by the trustee must: (1) only be proposed as part of a program of workforce and nonworkforce cost savings devised for the debtor's reorganization, including savings in management personnel costs; (2) be limited to modifications designed to achieve a specified aggregate financial contribution for employees covered by the agreement, taking into consideration any labor cost savings negotiated within the 12-month period prior to the filing of the bankruptcy case; (3) be no more than the minimum savings essential to permit the debtor to exit bankruptcy, such that confirmation is not likely to be followed by the liquidation or the need for further financial reorganization of the debtor; and (4) not be disproportionate or overly burden the employees covered by the agreement, either in the amount of the cost savings sought from such employees or the nature of the modifications.

Fourth, it amends Bankruptcy Code section 1113(d) to provide that if the trustee and the labor organization (after a period of negotiations) do not reach an agreement over mutually satisfactory modifications and further negotiations are not likely to produce mutually satisfactory modifications, the trustee may file a motion seeking rejection of the collective bargaining agreement after notice and a hearing. Absent agreement by the parties, the hearing may not be held earlier than 21 days from when notice of the hearing is provided. Only the debtor and the labor organization may appear and be heard at the hearing. An application for rejection must seek rejection effective upon the entry of an order granting such relief.

In consideration of federal policy encouraging the practice and process of collective bargaining and in recognition of the bargained-for expectations of the employees covered by the agreement, section 1113(d) (as amended) provides that the court may grant a motion seeking rejection of such agreement only if the court: (1) finds that the trustee has complied with the requirements of section 1113(c); (2) has considered alternative proposals by the labor organization and concluded that such proposals do not meet the requirements of section 1113(c)(3)(B); (3) finds that further negotiations regarding the trustee's proposal or an alternative proposal by the labor organization are not likely to produce an agreement; (4) finds that implementation of the trustee's proposal will not: (a) cause a material diminution in the purchasing power of the employees covered by the agreement, (b) adversely affect the debtor's ability to retain an experienced and qualified workforce; or (c) impair the debtor's labor relations such that the ability to achieve a feasible reorganization will be compromised; and (5) concludes, based on clear and convincing evidence, that rejection of the agreement and immediate implementation of the trustee's proposal is essential to permit the debtor's exit from bankruptcy such that confirmation is not likely to be followed by the liquidation or the need for further financial reorganization of the debtor in the short term. If the trustee has implemented a program of incentive pay, bonuses or other financial returns for insiders, senior executive officers, or the 20 next most highly compensated employees or consultants (or such a program was implemented within 180 days before the bankruptcy

case was filed), the court must presume that the debtor has failed to satisfy the requirements of section 1113(c)(3)(C).

Subsection (d), as amended, prohibits the court from entering an order rejecting a collective bargaining agreement that would result in modifications to a level lower than that proposed by the trustee in the proposal found by the court to have complied with the requirements of section 1113.

At any time after an order rejecting a collective bargaining agreement is entered (or mutually satisfactory agreement between the trustee and the labor organization is entered into), the labor organization may apply to the court for an order seeking an increase in the level of wages or benefits or relief from working conditions based on changed circumstances. The court must grant such relief only if the increase or other relief is not inconsistent with the standard set forth in section 1113(d)(2)(E).

Fifth, section 201 amends Bankruptcy Code section 1113(e) to provide that during the period in which a collective bargaining agreement at issue under this section continues in effect and if either essential to the continuation of the debtor's business or in order to avoid irreparable damage to the estate, the court, after notice and a hearing, may authorize the trustee to implement interim changes in the terms, conditions, wages, benefits, or work rules provided by the collective bargaining agreement. Any hearing under this provision must be scheduled in accordance of the trustee's needs. The implementation of such interim changes will not render the application for rejection moot.

Sixth, section 201 amends Bankruptcy Code section 1113(f) to provide that the rejection of a collective bargaining agreement constitutes a breach of such agreement and is effective no earlier than the entry of an order granting such relief. Solely for the purpose of determining and allowing a claim arising from rejection of a collective bargaining agreement, such rejection must be treated as a rejection of an executory contract under Bankruptcy Code section 365(g) and shall be allowed or disallowed in accordance with section 502(g)(1). Subsection (f), as amended, further provides that no claim for rejection damages may be limited by section 502(b)(7). In addition, the provision permits economic self-help by a labor organization upon a court order granting rejection of a collective bargaining agreement under either subsection (d) or (e) of section 1113. It further provides that neither title 11 of the United States Code nor other provisions of State or Federal law may be construed to the contrary.

Seventh, section 201 adds new subsection (g) to require the trustee to provide for the reasonable fees and costs incurred by a labor organization under section 1113, upon request and after notice and a hearing.

Eighth, section 201 adds new subsection (h) to require the assumption of a collective bargaining agreement to be done in accordance with section 365.

Sec. 202. Payment of Insurance Benefits to Retired Employees. Bankruptcy Code section 1114 sets out criteria pursuant to which a debtor may modify retiree benefits, among other matters. Retiree benefits include payments to retired employees, their spouses, and dependents for medical, surgical, and hospital care benefits. It also includes benefits in the event of sickness, accident, disability, or death under any plan, fund or program.

Section 202 amends section 1114 in several respects. First, it amends the provision's definition of "retiree benefits" to specify that it applies whether or not the debtor asserts a right to unilaterally modify such benefits under such plan, fund or program.

Second, it amends Bankruptcy Code section 1114(b)(2), which specifies the rights, powers and duties of a committee of retired employees appointed by the court. As amended, the provision would apply to a labor organization serving as the authorized representative under section 1114(c)(1).

Third, section 202 replaces Bankruptcy Code section 1114(f), which requires a trustee to make a proposal to the authorized representative before seeking modification of retiree benefits. As amended, section 1114(f)(1) specifies that if a trustee seeks to modify retiree benefits, the trustee must provide notice of such proposed modification to the authorized representative as well as promptly provide the initial proposal. In addition, the trustee must thereafter confer in good faith with the labor organization, at reasonable times and for a reasonable period, given the complexity of the case, in attempting to reach a mutually satisfactory modification. Each modification must be based on a business plan for the reorganization of the debtor and reflect the most complete and reliable information available. The trustee must provide the authorized representative all information relevant for the negotiations. If such disclosure could compromise the debtor's position with respect to its competitors in the industry, the court may issue a protective order, subject to the needs of the authorized representative to evaluate the trustee's proposal and an application pursuant to subsection (g) or (h).

Modifications proposed by the trustee must: (1) only be proposed as part of a program of workforce and nonworkforce cost savings devised for the reorganization of the debtor, including savings in management personnel costs; (2) be limited to modifications designed to achieve a specified aggregate financial contribution for the retiree group represented by the authorized representative (taking into consideration any labor cost savings negotiated within the 12-month period prior to the filing of the bankruptcy case with respect to the retiree group); (3) be no more than the minimum savings essential to permit the debtor to exit bankruptcy, such that confirmation is not likely to be followed by the liquidation or the need for further financial reorganization of the debtor; and (4) not be disproportionate or overly burden the retiree group, either in the amount of the cost savings sought from such group or the nature of the modifications.

Fourth, section 202 amends Bankruptcy Code section 1113(g) to provide that if the trustee and the authorized representative do not reach a mutually satisfactory agreement (after a period of negotiations) and further negotiations are not likely to produce mutually satisfactory modifications, the trustee may file a motion seeking to modify the payment of retiree benefits after notice and a hearing. Absent agreement of the parties, the hearing may not be held earlier than 21 days from when notice of the hearing is provided. Only the debtor and the authorized representative may appear and be heard at the hearing.

The court may grant a motion to modify the payment of retiree benefits only if the court: (1) finds that the trustee complied with the re-

quirements of section 1114(f); (2) considered any of the authorized representative's alternative proposals and determined that such proposals do not meet the requirements of section 1114(f)(3)(B); (3) finds that further negotiations are not likely to produce a mutually satisfactory agreement; (4) finds that implementation of the trustee's proposal will not cause irreparable harm to the affected retirees; and (5) concludes that, based on clear and convincing evidence, an order granting the trustee's proposal and its immediate implementation is essential to permit the debtor's exit from bankruptcy such that confirmation is not likely to be followed by the liquidation or the need for further financial reorganization of the debtor in the short term.

If the trustee has implemented a program of incentive pay, bonuses, or other financial returns for insiders, senior executive officers, or the 20 next most highly compensated employees or consultants (or such program was implemented within 180 days before the bankruptcy case was filed), the court must presume that the debtor failed to satisfy the requirements of section 1114(f)(3)(C).

Fifth, section 202 strikes subsection (k) and makes conforming revisions.

Sec. 203 Protection of Employee Benefits in a Sale of Assets. Section 203 amends Bankruptcy Code section 363(b), which authorizes a debtor to sell or use property of the estate other than in the ordinary course of business (under certain circumstances), to add a new requirement. New section 365(b)(3) requires the court, in approving a sale, to consider the extent to which a bidder's offer: (1) maintains existing jobs; (2) preserves terms and conditions of employment, and (3) assumes or matches pension and retiree benefit obligations in determining whether such offer constitutes the highest or best offer for the property.

Sec. 204. Claim for Pension Losses. Section 204 adds a new subsection to Bankruptcy Code section 502, which pertains to the allowance of claims and interests. New subsection (1) requires the court to allow a claim by an active or retired participant (or by a labor organization representing such participants) in a defined benefit pension plan terminated under section 4041 or 4042 of the Employee Retirement Income Security Act of 1974 (ERISA) for any shortfall in pension benefits accrued as of the effective date of the pension plan's termination as a result of such termination and limitations upon the payment of benefits imposed pursuant to section 4042 of such Act, notwithstanding any claim asserted and collected by the Pension Benefit Guaranty Corporation with respect to such termination.

In addition, section 204 adds subsection (m) to Bankruptcy Code section 502 to require a court to allow a claim described in Bankruptcy Code section 101(5)(C) (as amended by this legislation) by an active or retired participant (or a labor union representing such participant) in a defined contribution plan (within the meaning of section 3(34) of ERISA). The amount of such claim must be measured by the market value of the stock at the time of contribution to, or purchase by, the plan and the value as of the commencement of the case.

Sec. 205. Payments by Secured Lender. Bankruptcy Code section 506(c) authorizes the debtor to recover from property securing an allowed secured claim the reasonable and

necessary expenses incurred to preserve or dispose of such property to the extent the secured creditor benefits from such expenditures. Section 205 amends section 506(c) to add a new provision. As amended, section 506(c) deems unpaid wages, accrued vacation, severance or other benefits owed under the debtor's policies and practices or owed pursuant to a collective bargaining agreement, for services rendered on and after commencement of the case to be necessary costs and expenses of preserving or disposing of property securing an allowed secured claim. Such obligations must be recovered even if the trustee has otherwise waived the provisions of section 506(c) pursuant to an agreement with the allowed secured claimant or a successor or predecessor in interest.

Sec. 206. Preservation of Jobs and Benefits. Section 206 adds a statement of purpose to chapter 11 of the Bankruptcy Code specifying that a chapter 11 debtor must have as its principal purpose the reorganization of its business to preserve going concern value to the maximum extent possible through the productive use of its assets and the preservation of jobs that will sustain productive economic activity.

In addition, section 206 amends Bankruptcy Code section 1129(a), which sets out the criteria for confirming a plan, to add a new requirement. New section 1129(a)(17) requires the debtor to demonstrate that the reorganization preserves going concern value to the maximum extent possible through the productive use of the debtor's assets and preserves jobs that sustain productive economic activity.

Section 206 also amends Bankruptcy Code section 1129(c), which requires the court to consider the preferences of creditors and equity security holders in determining which plan to confirm. Section 1129(c), as amended, instead requires the court to consider the extent to which each plan would preserve going concern value through the productive use of the debtor's assets and the preservation of jobs that sustain productive economic activity. The court must confirm the plan that better serves such interests. It further provides that a plan that incorporates the terms of a settlement with a labor organization shall presumptively constitute the plan that satisfies this provision.

Sec. 207. Termination of Exclusivity. Bankruptcy Code section 1121, in pertinent part, gives a debtor the exclusive authority to file a plan and obtain acceptances of such plan for stated periods of time, under certain circumstances. Section 207 amends section 1121 to specify that cause for shortening these exclusive periods includes: (1) the filing of a motion pursuant to section 1113 seeking rejection of a collective bargaining agreement, if a plan based upon an alternative proposal by the labor organization is reasonably likely to be confirmed within a reasonable time; or (2) the proposed filing of a plan by a proponent other than the debtor, which incorporates the terms of a settlement with a labor organization, if such plan is reasonably likely to be confirmed within a reasonable time.

TITLE III—RESTRICTING EXECUTIVE COMPENSATION PROGRAMS

Sec. 301. Executive Compensation Upon Exit From Bankruptcy. Bankruptcy Code section 1129 specifies the criteria for confirmation of a chapter 11 plan. Section 1129(a)(4), for example, requires that certain services, costs and expenses in connection with the case (or

in connection with the plan and incident to the case) to have either been approved by the court (or subject to approval by the court) as reasonable. Section 301 amends section 1129(a)(4) to add a requirement that payments or other distributions under the plan to or for the benefit of insiders, senior executive officers, and any of the 20 next most highly compensated employees or consultants providing services to the debtor may not be approved unless: (1) such compensation is subject to review under section 1129(a)(5), or (2) such compensation is included as part of a program of payments or distributions generally applicable to the debtor's employees and only to the extent that the court determines that such payments are not excessive or disproportionate as compared to distributions to the debtor's nonmanagement workforce.

In addition, section 301 amends section 1129(a)(5), which requires the plan proponent to disclose the identity and affiliations of the debtor's officers and others, such as the identity of any insider who will be employed or retained by the reorganized debtor and such insider's compensation. Section 301 amends section 1129(a)(5) to add a requirement that such compensation must be approved (or subject to approval) by the court in accordance with the following criteria: (1) the compensation is reasonable when compared to that paid to individuals holding comparable positions at comparable companies in the same industry; and (2) the compensation is not disproportionate in light of economic concessions by the debtor's nonmanagement workforce during the case.

Sec. 302. Limitations on Executive Compensation Enhancements. In general, Bankruptcy Code Section 503(c) prohibits a debtor from making certain payments to an insider, absent certain findings by the court. Section 302 amends section 503(c)(1), which prohibits such payments when they are intended to induce the insider to remain with the debtor's business, in several respects. First, it expands the provision so that it applies a debtor's senior executive officer and any of the debtor's 20 next most highly compensated employees or consultants. Second, it clarifies that the provision prohibits the payment of performance or incentive compensation, a bonus of any kind, and other financial returns designed to replace or enhance incentive, stock, or other compensation in effect prior to the commencement of the case. And, third, it specifies that the court's findings must be based on clear and convincing evidence in the record.

In addition, section 302 also amends Bankruptcy Code section 503(c)(3), which prohibits other transfers made or obligations incurred outside of the debtor's ordinary course of business and not justified by the facts and circumstances of the case, including transfers made and obligations incurred for the benefit of the debtor's officers, managers or consultants hired postpetition. Section 302 replaces section 503(c)(3) with a provision prohibiting other transfers or obligations incurred to or for the benefit of insiders, senior executive officers, managers or consultants providing services to the debtor unless they meet certain criteria. First, the court must find, based on clear and convincing evidence (without deference to the debtor's request for authorization to make such payments), that such payments are essential to the survival of the debtor's business or, in the case of a liquidation, essential to the

orderly liquidation of the debtor's business and maximization of the value of the debtor's assets. Second, the services for which compensation is sought must be essential in nature. Third, such payments must be reasonable compared to individuals holding comparable positions at comparable companies in the same industry and not disproportionate in light of economic concessions made by the debtor's nonmanagement workforce during the case.

Sec. 303. Assumption of Executive Retirement Plans. Section 303 amends Bankruptcy Code section 365, which sets forth the criteria pursuant to which executory contracts and unexpired leases may be assumed and rejected, to add two provisions. New subsection (q) provides that no deferred compensation arrangement for the benefit of a debtor's insiders, senior executive officers, or any of the 20 next most highly compensated employees may be assumed if a defined benefit pension plan for the debtor's employees has been terminated pursuant to section 4041 or 4042 of ERISA on or after the commencement of the case or within 180 days prior to the commencement of the case.

New subsection (r) provides that no plan, fund, program, or contract to provide retiree benefits for insiders, senior executive officers, or any of the 20 next most highly compensated employees of the debtor may be assumed if the debtor: (1) has obtained relief under subsection (g) or (h) of section 1114 to impose reductions in retiree benefits; (2) has obtained relief under subsection (d) or (e) of section 1113 to impose reductions in the health benefits of the debtor's active employees; or (3) or reduced or eliminated active employee or retiree benefits within 180 days prior to the commencement of the case.

Sec. 304. Recovery of Executive Compensation. Section 304 adds a new provision to the Bankruptcy Code. New section 563(a) provides that if a debtor reduces its contractual obligations under a collective bargaining agreement pursuant to section 1113(d), or retiree benefits pursuant to section 1114(g), then the court, as part of the order granting such relief, must make certain determinations. The court must determine the percentage of diminution in the value of the obligations as a result of such relief. In making this determination, the court must include any reduction in benefits as a result of the termination pursuant to section 4041 or 4042 of ERISA of a defined benefit plan administered by the debtor, or for which the debtor is a contributing employer, effective at any time within 180 days prior to the commencement of the case. The court may not take into consideration pension benefits paid or payable under title IV of ERISA as a result of such termination.

If a defined benefit pension plan administered by the debtor, or for which the debtor is a contributing employer, is terminated pursuant to section 4041 or 4042 of ERISA, effective at any time within 180 days prior to the commencement of the case, and the debtor has not obtained relief under section 1113(d), or section 1114(g), new section 563(b) requires the court, on motion of a party in interest, to determine the percentage in diminution in the value of benefit obligations when compared to the total benefit liabilities prior to such termination. The court may not take into account pension benefits paid or payable pursuant to title IV of ERISA as a result of such termination.

After such percentage diminution in value is determined, new section 563(c) provides that the estate has a claim for the return of the same percentage of the compensation paid, directly or indirectly (including any transfer to a self-settled trust or similar device, or to a nonqualified deferred compensation plan under section 409A(d)(1) of the Internal Revenue Code of 1986) to certain individuals. These individuals include: (1) any officer of the debtor serving as a member of the debtor's board of directors within the year before the filing of the case; and (2) any individual serving as chairman or as lead director of the board of directors at the time when relief under section 1113 or section 1114 is granted, or if no such relief has been granted, then the termination of the defined benefit plan.

New section 563(d) provides that a trustee or committee appointed pursuant to section 1102 may commence an action to recover such claims. If neither commences such action by the first date set for the confirmation hearing, any party in interest may apply to the court for authority to recover such claims for the benefit of the estate. The costs of recovery must be borne by the estate.

New section 563(e) prohibits the court from awarding postpetition compensation under section 503(c) or otherwise to any person subject to the provisions of section 563(c) if there is a reasonable likelihood that such compensation is intended to reimburse or replace compensation recovered by the estate pursuant to section 563.

Sec. 305. Preferential Compensation Transfer. Bankruptcy Code section 547 authorizes preferential transfers to be avoided. Section 305 adds a new subsection to section 547 to permit the avoidance of a transfer to or for the benefit of an insider (including an obligation incurred for the benefit of an insider under an employment contract) made in anticipation of bankruptcy. The provision also permits the avoidance of a transfer made in anticipation of a bankruptcy to a consultant who is formerly an insider and who is retained to provide services to an entity that becomes a debtor (including an obligation under a contract to provide services to such entity or to a debtor) made or incurred within one year before the filing of the bankruptcy case. In addition, new section 547(j) provides that no provision of section 547(c) (specifying certain exceptions to section 547) may be utilized as a defense. Further, section 547(j) permits the trustee or a committee to commence such avoidance action. If neither do so as of the date of the commencement of the confirmation hearing, any party in interest may apply to the court for authority to recover the claims for the benefit of the estate. The costs of recovery must be borne by the estate.

TITLE IV—OTHER PROVISIONS

Sec. 401. Union Proof of Claim. Section 401 amends Bankruptcy Code section 501(a) to permit a labor organization (in addition to a creditor or indenture trustee) to file a proof of claim.

Sec. 402. Exception from Automatic Stay. Section 402 amends Bankruptcy Code section 362(b) to create an additional exception to the automatic stay with respect to the commencement or continuation of a grievance, arbitration or similar dispute resolution proceeding established by a collective bargaining agreement that was or could have been commenced against the debtor before the filing of the

bankruptcy case. The exception also applies to the payment or enforcement of awards or settlements of such proceeding.

IN HONOR OF THE OLENTANGY ORANGE HIGH SCHOOL GIRLS GOLF TEAM

HON. PATRICK J. TIBERI

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 3, 2017

Mr. TIBERI. Mr. Speaker, I rise today to recognize the Olentangy Orange High School Girls Golf team for winning the Ohio Division I State Golf Tournament.

An achievement such as this certainly deserves recognition. The Ohio High School Athletic Association has enabled talented teams and individuals to earn state titles since its founding in 1907. Throughout this time, the champions of OHSA state level competitions have represented the highest achieving and most talented athletes in Ohio. Each year these elite competitors join the long ranks of those who embody Ohio's proud history of athletic success.

The girls golf team's victory caps a tremendous season. This sort of achievement is earned only through many hours of practice, perspiration and hard work. They have set a new standard for future athletes to reach. Everyone at Olentangy Orange High School can be extremely proud of their performance.

On behalf of the citizens of Ohio's 12th Congressional District, I congratulate the Olentangy Orange Girls Golf Team on their state championship. I wish them continued success in both athletic and academic endeavors.

THE INTRODUCTION OF A BALANCED BUDGET AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES

HON. BOB GOODLATTE

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 3, 2017

Mr. GOODLATTE. Mr. Speaker, more than 20 years ago, the U.S. Senate failed by one vote to pass a balanced budget constitutional amendment. If Congress had sent the amendment to the states for ratification in 1995, we would not be facing the fiscal crisis we are today and balancing the federal budget would be the norm rather than the exception. In order for Congress to consistently make the tough decisions necessary for fiscal responsibility, Congress must have the external pressure of a balanced budget requirement.

This year marks the tenth year I have introduced amendments that require Congress to balance the federal budget. I urge my colleagues to consider the impact that reckless spending has on our nation's future and on future generations. According to a 2016 report from the Congressional Budget Office on the federal government's long-term budget outlook, the debt held by the public, assuming lawmakers abide by current law, is projected to rise "from 75 percent of GDP in 2016 to 141 percent by 2046." The effect of this debt

and our nation's current spending, according to CBO, will harm economic growth and will increase the risk of a fiscal crisis down the road. We should not pass on to our children and grandchildren the bleak fiscal future that our unsustainable spending is creating.

In the *Federalist*, Number 14, James Madison reminds us that the American people relied on "their own good sense, the knowledge of their own situation, and the lessons of their own experience" in addressing the problems of our constitutional government. With this in mind, it is time for Congress to put an end to fiscal irresponsibility and stop saddling future generations with crushing debts to pay for our current spending. We must rise above partisanship and join together to send a balanced budget amendment to the states for ratification.

The proposed amendment is a four-part balanced budget amendment. It contains a requirement for a balanced annual federal budget, places a spending cap on annual federal spending, imposes a three-fifths supermajority vote requirement to increase the debt limit, and a three-fifths supermajority requirement to raise taxes.

INTRODUCTION OF H.R. 40 THE COMMISSION TO STUDY REPARATIONS PROPOSALS FOR AFRICAN-AMERICANS ACT

HON. JOHN CONYERS, JR.

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 3, 2017

Mr. CONYERS. Mr. Speaker, I am pleased to re-introduce H.R. 40, the Commission to Study and Develop Reparations Proposals for African-Americans Act. Over the last several years, we have seen an almost unprecedented elevation of the dialogue on reparations at both the national and international levels. This version of H.R. 40 reflects that progress and is designed to serve as the vehicle for continued discussion.

Over the years, I have appeared at conferences and in the media to help lift the issues of reparations and the continuing impact of slavery in the national consciousness. Though some have tried to deflect the importance of these conversations by focusing on individual monetary compensation, the real issue is whether and how this nation can come to grips with the legacy of slavery that still infects current society.

Since H.R. 40's introduction in 1989, we have made substantial progress in elevating these issues at the national level and joining the mainstream international debate on the issue. Through legislation, resolutions, news, and litigation, we are moving closer to making more strides in the movement toward reparations. At the international level, last year, the United Nations proclaimed 2015 through 2024 to be the International Decade for People of African Descent. Today there are more people at the table—more activists, more scholars, more CEO's, more state and local officials, and more Members of Congress.

However, despite this progress and the election of the first American President of African descent, the legacy of slavery lingers heavily in this nation. While we have focused on the social effects of slavery and segregation, its continuing economic implications remain largely ignored by mainstream analysis.